IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.148 OF 2007

IN

SUMMARY SUIT NO.143 OF 2007

Jindal Drilling & Industries Ltd. .. Plaintiff.

Versus

Dr.S.Srinivasan .. Defendant.

Mr.Ruben A.Fernandes for plaintiffs.

Mr.Sanjay Jain with Mr.Kalpesh J. Nansi for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 2nd AUGUST, 2007.

P.C.:

1. This is a Summons for Judgement in Summary Suit wherein the plaintiff seeks a decree in the sum of Rs.10,66,576/- altogether with interest @15% from the date of filing of suit till payment or realisation.

2. According to the plaintiff, this amount is due and payable to them by the defendant under an Indemnity Bond / Writing dated 5th March, 2004. The Indemnity Bond /

Writing denotes payment of sums which have been spent in imparting specialized technique / training to the defendant. It is contended by the learned Counsel, appearing for the plaintiff that the Indemnity Bond was executed jointly with the plaintiff. It was executed between the plaintiff's predecessor and the present plaintiff so also the defendant before me. The plaintiff is undertaking contracts which involve drilling services to their clients in oil and gas industry. It requires qualified technical personnel and engineers, who are recruited and later on made eligible for cadre promotion provided they meet the specific standards. Thus, these standards are set and for the same to be achieved, training is provided by the plaintiff to the employees. It is on this basis that the expenditure is incurred and the employee binds himself to serve the plaintiff for a minimum period of five years from the date of his appointment.

3. In the present case, the plaintiff proceeds to allege that the total cost of training that was incurred aggregated to Rs.10,66,576/- and the break up is given in paragraph 12. The Indemnity Bond is breached, according to the plaintiff by the defendant when the defendant breached the obligations on 8th July, 2005 by tendering

his resignation. The plaintiff called upon the defendant to pay the sum of Rs.5.00 lakhs under the Indemnity Bond and reliance is placed upon a letter dated 18th August, 2005, which according to the plaintiff is an acknowledgement of the liability by the defendant in writing.

4. Thus, on the basis of the Indemnity Bond / Writing and the acknowledgement of liability that the present suit is filed as a summary suit and its maintainability as such is pressed.

5. It is contended that the defence set up is an after thought and once the liability was admitted unconditionally and unequivocally, then, a decree must follow or else conditional leave be granted by calling upon the defendant to deposit a sum of Rs.5.00 lakhs in Court. In the affidavit, the defence raised by the defendant is that he was in service of the plaintiff. It is true that he has tendered his resignation. However, the execution of the Indemnity Bond is denied on the basis that the crucial thing, as the date thereof is kept as blank. The bond is allegedly executed on 5th March, 2004 on a stamp paper dated 10th December, 2003. Further, in the appointment letter, there is no such condition of a

bond being executed in the event any promotional chances are offered. Reliance is also placed upon the settled principle that resignation is a mode of a termination of contract in service and there cannot be any prohibition in doing so in law. It is also contended that no amount is due and payable because the letter, relied upon by the plaintiff addressed by the defendant cannot be seen in isolation but will have to be seen in the backdrop of the correspondence preceding it and subsequent to the same. It is contended that the three months notice pay has already been paid. It is further contended that no amount is due and payable much less the one claimed in the suit. With regard to the statements in the letter of 8th August, 2005, this is what is stated in paragraph 7 of the reply :-

> "7. Without prejudice to my above submissions, most respectfully, I further submit that the said Bond is not applicable tome for the following reasons :-
>
> 7.1 The said Bond provides reciprocal obligations, i.e. by the company to me, and by me to the company. As could be seen from the records, the company never fulfilled their

obligations in providing me specialized training / technique as specifically provided in clause 2 (para 2 of page 2) of the Bond. I was appointed as Engineer (MWD), and continued carrying out one and the same responsibility till submission of my resignation. I was never imparted any training at all. Inasmuch as the company having failed in this very commitment, on which rests all other commitments, the entire bond becomes void, and of no effect in Law. In view of these circumstances, I am not liable for any obligation to the company in paying Rs.5,00,000/- as demanded, under the said redundant Bond.

7.2 I submit that the Bond is invalid and cannot be operative, as it was to apply only if I was sent for specialized technique / training, which the company has not done.

7.3 The said Bond cannot be made applicable, retrospectively, to the letter of Appointment, which is dated 5th March, 2004, whereas as clearly admitted by the company that the said Indemnity Bond was executed on 5th March, 2005, in the absence of any specific mention in the said letter

of Appointment dated 5th March, 2004 that whatever Bonds subsequently executed during the service would be retrospectively effected.

7.4 The Bond, apart from the above deficiencies, and laches, is invalid, for the reason that the same is executed as clearly admitted by the company on 5th March, 2005, on a stamp paper dated 10th December, 2003, i.e. after a period of 14 months, the validity period having been lapsed.

7.5 In view of the above submission, your goodself will agree that the said Bond dated 5th March, 2005, is not applicable in my case, at all and I am bound only by the terms and conditions, specifically set out in the Appointment letter dated 5th March, 2004, and revision of pay letter dated 1st March, 2005.

7.6 I have fulfilled the terms and conditions stipulated therein by offering necessary amount to cover three months notice pay in lieu of notice period, and requested the company to accept my resignation with immediate effect."

6. It is in these circumstances that Mr.Jain prays for unconditional leave to defend. With the assistance of Mr.Jain and the learned counsel appearing for the plaintiff, I have gone through the plaint, the annexures thereto and the reply and the rejoinder. The principal issue about the suit being maintainable as a summary suit is raised in the backdrop of the denial of the defendant about execution of the Indemnity Bond / Writing. Further, it is contended that there is no liquidated sum of money demanded by the plaintiff.

7. In the present case, the plaintiff places reliance upon the appointment letter of 5th March, 2004 and the resignation letter. The reply affidavit refers to several documents and correspondence. However, the company's letter dated 1st March, 2005 granting revision in salary is silent with regard to any Indemnity Bond being executed between parties. It is true that one of the letters which have been addressed after the resignation is dated 18th August, 2005 (Exhibit G). However, from a perusal of the reply affidavit, it is clear that the defendant has disputed his liability. In this behalf, reliance is placed upon a letter dated 22nd July, 2005. A perusal of the said letter clearly states that the defendant is

disputing the training and the liability to pay any sums over and above three months basic pay under lieu of notice. That amount is remitted admittedly. That letter is in response to the letter of the company raising a demand of Rs.5.00 lakhs for non fulfilling of the obligations under the Indemnity Bond.

8. There is substance in the contentions of the defendant that the offer made to pay Rs.2.00 lakhs cannot be seen as an isolated letter or writing. It is a part of the series of letters exchanged between parties. While it is true that at one stage, the defendant offered to pay Rs.2.00 lakhs provided the same is accepted in full and final settlement but even that offer is not reiterated before me.

9. I had given time to parties to amicably settle the matter but it appears that the defendant is unable to pay even the sum of Rs.2.00 lakhs in instalments due to financial position.

10. In my view, considering that the dispute is about execution of the Indemnity Bond, which is not admitted to be executed atleast on 5th March, 2004 and even the reciprocal obligations therein having been allegedly

breached, several triable issues would arise in this case. This is not a case where the Indemnity Bond could be made the basis of the summary suit and hence recovery on the footing that the liability therein is admitted and acknowledged. In the backdrop of the relationship between parties and the correspondence on record, triable issues arise and liability of the defendant to pay the sum as demanded will have to be proved. The triable issues are not possible to be decided on affidavits alone. Unconditional leave is granted to the defendant to defend the suit. The suit is transferred to the list of commercial causes with usual directions for filing of written statement and inspection. Summons for Judgement disposed of accordingly.

(S.C.Dharmadhikari, J.)